

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JAMES DUNN,

Plaintiff,

v.

Case No.: 2:23-cv-534-SPC-KCD

WRIGHT NATIONAL FLOOD
INSURANCE COMPANY,

Defendant.

_____ /

ORDER

This lawsuit stems from hurricane Ian. Plaintiff James Dunn alleges his flood insurance carrier, Defendant Wright National Flood Insurance Company, won't pay his claim. The complaint contains a single count for breach of contract. (Doc. 18.)¹

Wright has moved to dismiss the complaint, or alternatively, strike portions of it. (Doc. 17.) Wright says Dunn is seeking relief that is barred under "the United States Government's National Flood Insurance Program." (*Id.* at 1.) Specifically, Dunn's "claims for attorney's fees, costs and interest pursuant to state law are preempted . . . by federal statutory, regulatory, and common law." (*Id.* at 2.) Dunn did not respond to Wright's motion, and the time to do so

¹ Unless otherwise indicated, all internal quotation marks, citations, and alterations have been omitted in this and later citations.

expired. The Court thus treats this matter as unopposed. *See* Local Rule 3.01(c).

The flood policy issued to Dunn falls under the National Flood Insurance Program. (*See* Doc. 18; Doc. 17 at 2.) As such, federal law controls this breach of contract action. *See Simpson v. United Prop. & Cas. Ins. Co.*, No. 6:18-CV-2010-ORL-40-GJK, 2019 WL 636499, at *2 (M.D. Fla. Jan. 30, 2019). State law claims are also preempted. *See Shuford v. Fid. Nat. Prop. & Cas. Ins. Co.*, 508 F.3d 1337, 1344 (11th Cir. 2007).

Dunn is seeking various forms of relief under state law, including attorney's fees, interest, and costs. These requests are improper. *See, e.g., Friedman v. S.C. Ins. Co.*, 855 F. Supp. 348, 351 (M.D. Fla. 1994); *Bianchi v. State Farm Fire & Cas. Co.*, 120 F. Supp. 2d 837, 842 (N.D. Cal. 2000). Dunn asks for interest on his damages, which "is barred because it would be assessed against the government." *Lovers Lane, LLC v. Wright Nat'l Flood Ins. Co.*, No. 218CV741FTM29MRM, 2019 WL 130362, at *1 (M.D. Fla. Jan. 8, 2019).

Accordingly, it is now **ORDERED**:

1. Defendant's Motion to Dismiss or in the Alternative Motion to Strike (Doc. 17) is **GRANTED IN PART** as to striking Dunn's demands for interest and relief under Florida law.

2. The references to the recovery of interest and Florida law in Paragraphs 14, 16, 17, and the Wherefore Clause (Doc. 18) are **STRICKEN**.

3. Defendant's motion is **DENIED** as to dismissal.

ENTERED in Fort Myers, Florida on September 13, 2023.



Kyle C. Dudek
United States Magistrate Judge

Copies: All Parties of Record